

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

TODD LOPEZ, AS PERSONAL  
REPRESENTATIVE OF THE WRONGFUL  
DEATH ESTATE OF JAMES MATHIS and  
DEBORAH MATHIS, individually,

Plaintiffs,

v.

Case No. \_\_\_\_\_

UNITED PARCEL SERVICE OF AMERICA, INC.,  
UPS GROUND FREIGHT, INC.,  
ATRIX TRUCKING CORP, and  
DARWIN CARDENAS-NUNEZ,

Defendants.

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332(a), 1441(a) and (b), and 1446, and the Local Rules of the United States District Court for the District of New Mexico, Defendants, by and through undersigned counsel, hereby remove this matter from the First Judicial District Court of the State of New Mexico, Santa Fe County, to the United States District Court for the District of New Mexico. In support thereof, Defendants state as follows:

**PROCEDURAL HISTORY**

1. Plaintiff Todd Lopez, as Personal Representative of the Wrongful Death Estate of James Mathis, and Plaintiff Deborah Mathis, filed a civil action against UPS Ground Freight, Inc., and Darwin Cardenas-Nunez in the State of New Mexico, County of Santa Fe, First Judicial District Court, captioned *Todd Lopez, as Personal Representative of the Wrongful Death Estate of James Mathis, and Deborah Mathis, Individually, v. UPS Ground Freight, Inc., and Darwin Cardenas-Nunez*, Cause No. D-101-CV-2021-01048. See Compl., attached hereto as *Exhibit A*.

2. Prior to service of the Complaint, Plaintiffs filed a First Amended Complaint, wherein they assert claims against United Parcel Service of America, Inc. (“UPS-OA”), UPS Ground Freight, Inc. (“UPS-GF”), Atrix Trucking Corp. (“Atrix”), and Darwin Cardenas-Nunez, captioned as *Todd Lopez, as Personal Representative of the Wrongful Death Estate of James Mathis, and Deborah Mathis, Individually, v. United Parcel Service of America, Inc., UPS Ground Freight, Inc, Atrix Trucking Corp., and Darwin Cardenas-Nunez*. See Am. Compl., attached hereto as *Exhibit B*.

3. Service of the Amended Complaint was accepted by Cardenas-Nunez on June 9, 2021. See Certificate of Service filed June 25, 2021, *Exhibit C*.

4. UPS-OA was served with the First Amended Complaint on June 1, 2021. See Certificate of Service filed June 25, 2021, attached as *Exhibit D*.

5. UPS-GF, n/k/a TForce Freight, Inc. (“TForce Freight”), was served with the First Amended Complaint on June 1, 2021. See Certificate of Service filed June 25, 2021, attached as *Exhibit E*. TForce Freight is not a proper party to this matter because, on January 24, 2021, UPS-OA sold the business of UPS-GF, except for certain assets and liabilities, to non-party TForce Holdings, Inc. (“TForce Holdings”); the liability, if any, arising from this matter was excluded from that sale and retained by OPS-OA. TForce Holdings, the owner of the business formerly known as UPS-GFI, has now changed the name of UPS-GFI to TForce Freight.

6. Atrix received a copy of the First Amended Complaint on June 9, 2021 and was formally served by a process server on June 22, 2021, attached as *Exhibit F*.

7. This Notice of Removal is filed in accordance with 28 U.S.C. §§1441(b) and 1446.

### **TIMELINESS OF REMOVAL**

8. This Notice of Removal is filed within 30 days of receipt by Defendants of service of process upon them.

9. Therefore, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b). Moreover, this matter has been pending for less than one year.

### **BASIS FOR REMOVAL**

11. Removal of this matter is proper under 28 U.S.C. §1441 and 28 U.S.C. §1332, because complete diversity of citizenship exists between Plaintiffs and Defendants, and, based upon express assertions in the Amended Complaint, the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of costs and interest.

#### **Diversity of Citizenship**

12. For diversity purposes, a person is a “citizen” of the state in which he is domiciled.” *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Residence is prima facie evidence of domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994).

13. Plaintiff Todd Lopez is a resident of Santa Fe, Santa Fe County, New Mexico. Accordingly, he is a citizen of New Mexico. *See Exhibit B* at ¶2.

14. Plaintiff Deborah Mathis is domiciled in and a citizen of Oklahoma. *Id.* at ¶1.

15. UPS-OA is incorporated in Delaware, with its principal place of business in Atlanta, Georgia. Accordingly, UPS-OA could be considered a citizen of Delaware or Georgia. For purposes of removal jurisdiction, UPS-OA is not a citizen of New Mexico.

16. TForce Freight is incorporated in Virginia, with its principal place of business in Richmond, Virginia. Accordingly, TForce Freight is a citizen of Virginia. For purposes of removal jurisdiction, TForce Freight is not a citizen of New Mexico.



17. Atrix is incorporated in Florida with its principal place of business in Maitland, Florida. Accordingly, Atrix is a citizen of Florida. For purposes of removal jurisdiction, Defendant Atrix is not a citizen of New Mexico.

18. Darwin Cardenas-Nunez is domiciled in and a citizen of Florida.

19. Based upon the foregoing, and for purposes of removal jurisdiction, complete diversity exists between Plaintiffs and Defendants.

#### **Amount in Controversy**

20. Under 28 U.S.C. §1441(a), “the amount in controversy is ordinarily determined by the allegations of the complaint, or, where they are not dispositive, by the allegations in the notice of removal.” *Martin v. Franklin Capital Corp.*, 251 F.3d 1284, 1290 (10th Cir. 2001). The Tenth Circuit has clarified this standard by stating that the removing defendant “must affirmatively establish jurisdiction by proving jurisdictional *facts* that made it *possible* that \$75,000 was in play. . . [i]t is only the jurisdictional facts that must be proven by a preponderance – not the legal conclusion that the statutory threshold amount is in controversy.” *McPhail*, 529 F.3d at 955 (emphasis in original). The Tenth Circuit has noted, however, that a plaintiff cannot avoid removal merely by not alleging the jurisdictional amount, as such a practice/policy would frustrate the purpose of diversity jurisdiction, “which is, after all, to protect the out-of-state Defendant.” *McPhail*, 529 F.3d at 955.

21. To determine whether the amount in controversy requirement is met, a court may aggregate actual damages, punitive damages, attorney’s fees and statutorily imposed penalties, if any, but not interest or costs. *Trujillo v. Reynolds*, No. CIV 07-1077 JB/RLP, 2008 WL 2323521, \*3 (Jan. 17, 2008).

22. A removing defendant may satisfy its burden by proving jurisdictional facts that make it possible that more than \$75,000 is at issue by “rely[ing] on an estimate of the potential

damages from the allegations in the complaint.” *Id.* In doing this, the defendant may specify the numerical value of the damage or may not and just allege that the amount in controversy exceeds \$75,000 by setting out the specific factual allegations supporting that conclusion. *Id.* at 956 (citing *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999); *see also Hanna v. Miller*, 163 F.Supp.2d 1302, 1306 (D.N.M. 2001) (stating that courts may consider the substance and nature of the injuries and damages described in the pleadings and finding significant value in plaintiff’s claims where complaint alleged “severe injuries” and “permanent impairment”).

23. Here, there is no dispute. In the Amended Complaint, Plaintiff Deborah Mathis expressly seeks damages in excess of \$75,000, including compensatory damages for past and future medical expenses, past and future physical pain and suffering, past and future mental pain and suffering, permanent impairment, loss of enjoyment of life, punitive damages, loss of consortium, and “[o]ther damages to be more fully set forth after discovery is completed.” *See Exhibit B*, at ¶ 21. Further, Plaintiff Todd Lopez, for and on behalf the Estate of James Mathis, seeks additional damages for the “negligence, recklessness and willful and wonton conduct of Defendants,” including “the value of James Mathis’s life”; his post-accident mental pain and suffering; his post-accident physical pain and suffering; the value of his lost household services; punitive damages; and “[o]ther damages to be more fully set forth after discovery is completed.” *See Exhibit B*, at ¶ 22.

24. According to the plain language of Plaintiffs’ Amended Complaint, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

25. Thus, pursuant to 28 U.S.C. § 1332(a), this Court has jurisdiction over this matter, because the parties hereto are citizens of different states and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

**NOTICE OF ADVERSE PARTY AND STATE COURT**

25. Defendants, upon filing this Notice of Removal, are filing a copy of this Notice of Removal with the District Clerk of the First Judicial District Court in the State of New Mexico, Santa Fe County, in accordance with 28 U.S.C. §1446(d). A copy of the Notice of Filing of Notice of Removal is attached as *Exhibit G*.

26. Pursuant to by 28 U.S.C. §1446(d), written notice of removal is being served on counsel of record.

**FILINGS FROM STATE COURT DOCKET**

27. Pursuant to D.N.M. LR-CIV 81.1(a) of the Local Civil Rules of the United States District Court for the District of New Mexico, legible copies of records and proceedings from the state court action are being filed herewith.

28. Defendants do not waive any and all defenses they have or may have to Plaintiffs' Amended Complaint, including, without limitation, insufficiency of process, insufficiency of service of process, lack of jurisdiction and failure to join necessary and indispensable parties.

WHEREFORE, Defendants respectfully request this matter be entered upon the docket of the United States District Court for the District of New Mexico, pursuant to 28 U.S.C. §§ 1441 and 1446.

Respectfully Submitted,

BUTT THORNTON & BAEHR PC

/s/ Monica R. Garcia

Monica R. Garcia

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Telephone: (505) 884-0777

Facsimile: (505) 889-8870

[mrgarcia@btblaw.com](mailto:mrgarcia@btblaw.com)

*Attorneys for Defendants*

I HEREBY CERTIFY that on the 29<sup>th</sup> day of June, 2021, I filed the foregoing electronically through the CM/ECF filing system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

David Fadduol - [david@df-lawfirm.com](mailto:david@df-lawfirm.com)

Michael Carr - [mcarr@carrcarr.com](mailto:mcarr@carrcarr.com)

*Attorneys for Plaintiffs*

/s/ Monica R. Garcia

Monica R. Garcia



FILED 1st JUDICIAL DISTRICT COURT  
Santa Fe County  
5/5/2021 4:00 PM  
KATHLEEN VIGIL CLERK OF THE COURT  
Faith Griego

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

TODD LOPEZ, AS PERSONAL  
REPRESENTATIVE OF THE WRONGFUL  
DEATH ESTATE OF JAMES MATHIS and  
DEBORAH MATHIS, individually,

Plaintiffs,

Case assigned to Ellenwood, Kathleen McGarry

vs.

No. D-101-CV-2021-01048

UPS GROUND FREIGHT, INC. and  
DARWIN CARDENAS-NUNEZ,

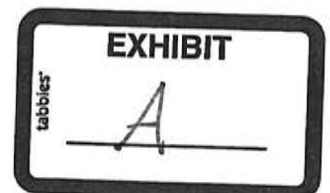
Defendants.

**PLAINTIFFS' COMPLAINT**

COME NOW the Plaintiffs, by and through their attorneys of record, Law Office of David Fadduol, LLC (David Fadduol) and Carr and Carr (Michael Carr), and for their causes of action against the Defendants UPS Ground Freight, Inc. and Darwin Cardenas-Nunez, state as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Deborah Mathis is domiciled in and a citizen of the State of Oklahoma.
2. Todd Lopez, as Personal Representative of the Estate of James Mathis, is a resident of Santa Fe, Santa Fe County, New Mexico.
3. UPS Ground Freight, Inc. (UPS) is a foreign for-profit corporation that has its principal place of business in the State of Virginia and is incorporated in the State of Virginia. UPS may be served through its registered agent: Corporation Service Company, MC-CSC1, 726 E. Michigan Dr., Ste. 101, Hobbs, NM 88240.





4. Darwin Cardenas-Nunez (Cardenas-Nunez) is domiciled in and a citizen of the State of Florida.

5. This Court has jurisdiction over this matter because the events and occurrences giving rise to this action occurred in the State of New Mexico.

6. Venue is proper in Santa Fe County, New Mexico as it is the county in which the Person Representative resides. NMSA 1978, § 38-3-1.

### **FACTS**

7. This case arises out of an automobile collision that occurred on December 2, 2020, in the State of New Mexico and County of Cibola.

8. On said date, Cardenas-Nunez was driving a UPS semi-truck in the course and scope of his employment with UPS.

9. Cardenas-Nunez was driving east on Interstate 40 on snow packed icy roads with limited visibility.

10. James Mathis and Deborah Mathis were travelling in front of Cardenas-Nunez.

11. A vehicle attempted to merge in front of the Mathis vehicle causing James Mathis to slow his vehicle down. Cardenas-Nunez did not slow or stop his vehicle in time to avoid colliding with the Mathis vehicle. Consequently, Cardenas-Nunez struck the rear of the Mathis vehicle, causing the Mathis vehicle to depart the roadway and flip until it eventually came to rest upside down.

12. The collision caused the death of James Mathis and also caused Deborah Mathis to sustain serious injuries.

### **LIABILITY**

13. Cardenas-Nunez caused the collision by his negligence, recklessness, and willful and wanton conduct as follows:

- a. He violated 49 CFR 392.14 by operating the semi-truck in dangerous weather conditions and by failing to exercise extreme caution;
- b. He failed to keep a safe distance between his vehicle and the Mathis vehicle;
- c. He was travelling too fast for the conditions;
- d. He failed to adequately maintain and inspect the vehicle he was driving;
- e. He violated various city ordinances and Statutes of the State of New Mexico, such as:
  - i. New Mexico Statute Annotated Section 66-8-113 in that he drove the semi-truck carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property. Plaintiffs belong to the class of persons to which this statute was meant to protect and the harm and/or injury incurred is generally of the type this ordinance seeks to prevent.
  - ii. New Mexico Statute Annotated Section 66-8-114 in that he drove the semi-truck without giving his full time and entire attention to the operation of the vehicle. Plaintiffs belong to the class of persons to which this statute was meant to protect and the harm and/or injury incurred is generally of the type this ordinance seeks to prevent.

14. UPS was negligent, reckless and acted with willful and wanton conduct by entrusting Cardenas-Nunez with the use of its vehicle when it knew or should have known that Cardenas-Nunez was not safe to drive the semi-truck, was not competent or fit to drive the semi-truck, had a propensity for negligent driving, driving while distracted and/or was not sufficiently trained to drive the semi-truck safely, and entrusted him with driving a semi-truck that was not adequately equipped, inspected and/or maintained.

15. UPS was negligent per se in allowing Cardenas-Nunez to drive the vehicle without being qualified and/or trained to safely operate the vehicle, as prohibited by 49 CFR 391.11, and by failing to have the knowledge of and not complying with all FMCSRs, as required by FMCSR § 390.3, and § 390.11, *see also* FMCSR § 383.110 and § 383.111.

16. UPS was negligent, reckless and acted with willful and wanton conduct by:

- a. Failing to adequately train Cardenas-Nunez;
- b. Failing to adequately supervise Cardenas-Nunez;
- c. Failing in choosing to retain Cardenas-Nunez as an employee.

17. UPS is liable to the Plaintiffs by virtue of *respondeat superior* due to the acts and omissions of its employee/agent, Cardenas-Nunez.

18. Each of the above acts and/or omissions were singularly and/or cumulatively a proximate cause of the incident and the resulting injuries and damages suffered by the Plaintiffs.

#### **DAMAGES**

19. As a result of the negligence, recklessness and willful and wanton conduct of the Defendants, Plaintiff Deborah Mathis individually seeks damages in excess of \$75,000.00 as follows:

- a. Past medical expenses;
- b. Future medical expenses;
- c. Past physical pain and suffering;
- d. Future physical pain and suffering;
- e. Past mental pain and suffering;
- f. Future mental pain and suffering;
- g. Permanent impairment;



- h. Loss of enjoyment of life;
- i. Punitive damages;
- j. Loss of consortium;
- k. Other damages to be more fully set forth after discovery is completed.

20. As a result of the negligence, recklessness and willful and wanton conduct of the Defendants, Todd Lopez as personal representative of the Estate of James Mathis seeks damages as follows:

- a. The mental pain and suffering suffered by James Mathis between the time of the collision and the time of his death;
- b. The physical pain and suffering suffered by James Mathis between the time of the collision and the time of his death;
- c. The value of James Mathis's life;
- d. The value of the lost household services;
- e. Punitive damages;
- f. Other damages to more fully set forth after discovery is completed.

21. The Defendants' acts and/or omissions described herein were done with recklessness and willful and wanton conduct, justifying an award of punitive damages.

22. A corporation may be held liable for punitive damages for the misconduct of its employees and/or agents. The actions of Defendant UPS's employees and/or agents, taken as a whole, showed that UPS was malicious, willful, reckless, or wanton, justifying an award of punitive damages.

23. Cardenas-Nunez was acting within the scope of his employment with UPS and had sufficient discretionary or policy-making authority to speak and act for UPS with regard to the conduct at issue, independent of higher authority.

24. UPS authorized, participated in or ratified the conduct of Cardenas-Nunez giving rise to punitive damages.

25. A corporation may be held liable for punitive damages for the misconduct of its employees and/or agents. The actions of Cardenas-Nunez, taken as a whole, showed that his actions amounted to negligence, recklessness and willful and wanton conduct, justifying an award of punitive damages.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants for the injuries and damages set forth above, costs of suit herein incurred, interest and such other and further relief as the Court deems just and equitable.

Respectfully submitted,

**Law Office of David Fadduol, LLC**

/s/ David Fadduol

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/s/ Michael Carr

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***Attorneys for Plaintiffs***

FILED 1st JUDICIAL DISTRICT COURT  
Santa Fe County  
5/20/2021 2:24 PM  
KATHLEEN VIGIL CLERK OF THE COURT  
Tamara Snee

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

TODD LOPEZ, AS PERSONAL  
REPRESENTATIVE OF THE WRONGFUL  
DEATH ESTATE OF JAMES MATHIS and  
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Plaintiffs,

vs.

No. D-101-CV-2021-01048

UNITED PARCEL SERVICE OF AMERICA, INC.,  
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DARWIN CARDENAS-NUNEZ,

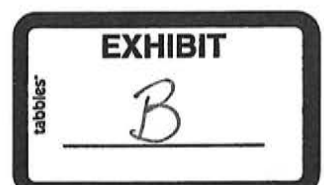
Defendants.

**PLAINTIFFS' AMENDED COMPLAINT**

COME NOW the Plaintiffs, by and through their attorneys of record, Law Office of David Fadduol, LLC (David Fadduol) and Carr and Carr (Michael Carr), and for their causes of action against the Defendants United Parcel Service of America, Inc., UPS Ground Freight, Inc., Atrix Trucking Corp. and Darwin Cardenas-Nunez, state as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Deborah Mathis is domiciled in and a citizen of the State of Oklahoma.
2. Todd Lopez, as Personal Representative of the Estate of James Mathis, is a resident of Santa Fe, Santa Fe County, New Mexico.
3. United Parcel Service of America, Inc. (UPSA) is a foreign for-profit corporation that has its principal place of business in the State of Georgia and is incorporated in the State of





Delaware. UPSA may be served through its registered agent: CSC of Cobb County, Inc., 192 Anderson Street SE, Suite 125, Marietta, Georgia, 30060.

4. UPS Ground Freight, Inc. (UPSGF) is a foreign for-profit corporation that has its principal place of business in the State of Virginia and is incorporated in the State of Virginia. UPS may be served through its registered agent: Corporation Service Company, MC-CSC1, 726 E. Michigan Dr., Ste. 101, Hobbs, NM 88240.

5. Atrix Trucking Corp. (Atrix) is a foreign for-profit corporation that has its principal place of business in the State of Florida and is incorporated in the State of Florida. Atrix can be served through its registered agent: Charles E. Joseph, 130 Birchwood Drive, Maitland, FL 32751.

6. Darwin Cardenas-Nunez (Cardenas-Nunez) is domiciled in and a citizen of the State of Florida.

7. This Court has jurisdiction over this matter because the events and occurrences giving rise to this action occurred in the State of New Mexico.

8. Venue is proper in Santa Fe County, New Mexico as it is the county in which the Person Representative resides. NMSA 1978, § 38-3-1.

#### **FACTS**

9. This case arises out of an automobile collision that occurred on December 2, 2020, in the State of New Mexico and County of Cibola.

10. On said date, Cardenas-Nunez was driving a UPSA, UPSGF and/or Atrix semi-truck in the course and scope of his employment and/or agency with UPSA, UPSGF and/or Atrix.

11. Cardenas-Nunez was driving east on Interstate 40 on snow packed icy roads with limited visibility.

12. James Mathis and Deborah Mathis were travelling in front of Cardenas-Nunez.

13. A vehicle attempted to merge in front of the Mathis vehicle causing James Mathis to slow his vehicle down. Cardenas-Nunez did not slow or stop his vehicle in time to avoid colliding with the Mathis vehicle. Consequently, Cardenas-Nunez struck the rear of the Mathis vehicle, causing the Mathis vehicle to depart the roadway and flip until it eventually came to rest upside down.

14. The collision caused the death of James Mathis and also caused Deborah Mathis to sustain serious injuries.

#### **LIABILITY**

15. Cardenas-Nunez caused the collision by his negligence, recklessness, and willful and wanton conduct as follows:

- a. He violated 49 CFR 392.14 by operating the semi-truck in dangerous weather conditions and by failing to exercise extreme caution;
- b. He failed to keep a safe distance between his vehicle and the Mathis vehicle;
- c. He was travelling too fast for the conditions;
- d. He failed to adequately maintain and inspect the vehicle he was driving;
- e. He violated various city ordinances and Statutes of the State of New Mexico, such as:
  - i. New Mexico Statute Annotated Section 66-8-113 in that he drove the semi-truck carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property. Plaintiffs belong to the class of persons to which this statute was meant to protect and the harm and/or injury incurred is generally of the type this ordinance seeks to prevent.

- ii. New Mexico Statute Annotated Section 66-8-114 in that he drove the semi-truck without giving his full time and entire attention to the operation of the vehicle. Plaintiffs belong to the class of persons to which this statute was meant to protect and the harm and/or injury incurred is generally of the type this ordinance seeks to prevent.

16. UPSA, UPSGF and/or Atrix was negligent, reckless and acted with willful and wanton conduct by entrusting Cardenas-Nunez with the use of its vehicle when it knew or should have known that Cardenas-Nunez was not safe to drive the semi-truck, was not competent or fit to drive the semi-truck, had a propensity for negligent driving, driving while distracted and/or was not sufficiently trained to drive the semi-truck safely, and entrusted him with driving a semi-truck that was not adequately equipped, inspected and/or maintained.

17. UPSA, UPSGF and/or Atrix was negligent per se in allowing Cardenas-Nunez to drive the vehicle without being qualified and/or trained to safely operate the vehicle, as prohibited by 49 CFR 391.11, and by failing to have the knowledge of and not complying with all FMCSRs, as required by FMCSR § 390.3, and § 390.11, *see also* FMCSR § 383.110 and § 383.111.

18. UPSA, UPSGF and/or Atrix was negligent, reckless and acted with willful and wanton conduct by:

- a. Failing to adequately train Cardenas-Nunez;
- b. Failing to adequately supervise Cardenas-Nunez;
- c. Failing in choosing to retain Cardenas-Nunez as an employee.

19. UPSA, UPSGF and/or Atrix is liable to the Plaintiffs by virtue of *respondeat superior* due to the acts and omissions of its employee/agent, Cardenas-Nunez.

20. Each of the above acts and/or omissions were singularly and/or cumulatively a proximate cause of the incident and the resulting injuries and damages suffered by the Plaintiffs.



### **DAMAGES**

21. As a result of the negligence, recklessness and willful and wanton conduct of the Defendants, Plaintiff Deborah Mathis individually seeks damages in excess of \$75,000.00 as follows:

- a. Past medical expenses;
- b. Future medical expenses;
- c. Past physical pain and suffering;
- d. Future physical pain and suffering;
- e. Past mental pain and suffering;
- f. Future mental pain and suffering;
- g. Permanent impairment;
- h. Loss of enjoyment of life;
- i. Punitive damages;
- j. Loss of consortium;
- k. Other damages to be more fully set forth after discovery is completed.

22. As a result of the negligence, recklessness and willful and wanton conduct of the Defendants, Todd Lopez as personal representative of the Estate of James Mathis seeks damages as follows:

- a. The mental pain and suffering suffered by James Mathis between the time of the collision and the time of his death;
- b. The physical pain and suffering suffered by James Mathis between the time of the collision and the time of his death;
- c. The value of James Mathis's life;
- d. The value of the lost household services;

e. Punitive damages;

f. Other damages to more fully set forth after discovery is completed.

23. The Defendants' acts and/or omissions described herein were done with recklessness and willful and wanton conduct, justifying an award of punitive damages.

24. A corporation may be held liable for punitive damages for the misconduct of its employees and/or agents. The actions of Defendants UPSA, UPSGF and/or Atrix's employees and/or agents, taken as a whole, showed that UPSA, UPSGF and/or Atrix was malicious, willful, reckless, or wanton, justifying an award of punitive damages.

25. Cardenas-Nunez was acting within the scope of his employment and/or agency with UPSA, UPSGF and/or Atrix and had sufficient discretionary or policy-making authority to speak and act for UPSA, UPSGF and/or Atrix with regard to the conduct at issue, independent of higher authority.

26. UPSA, UPSGF and/or Atrix authorized, participated in or ratified the conduct of Cardenas-Nunez giving rise to punitive damages.

27. A corporation may be held liable for punitive damages for the misconduct of its employees and/or agents. The actions of Cardenas-Nunez, taken as a whole, showed that his actions amounted to negligence, recklessness and willful and wanton conduct, justifying an award of punitive damages.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants for the injuries and damages set forth above, costs of suit herein incurred, interest and such other and further relief as the Court deems just and equitable.

Respectfully submitted,

**Law Office of David Fadduol, LLC**

/s/ David Fadduol\_\_\_\_\_

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and

**Carr and Carr**

/s/ Michael Carr\_\_\_\_\_

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***Attorneys for Plaintiffs***



STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

FILED 1st JUDICIAL DISTRICT COURT  
Santa Fe County  
6/25/2021 7:58 AM  
KATHLEEN VIGIL CLERK OF THE COURT  
Edith Suarez-Munoz

TODD LOPEZ, AS PERSONAL  
REPRESENTATIVE OF THE WRONGFUL  
DEATH ESTATE OF JAMES MATHIS and  
DEBORAH MATHIS, individually,

Plaintiffs,

vs.

No. D-101-CV-2021-01048

UNITED PARCEL SERVICE OF AMERICA, INC.,  
UPS GROUND FREIGHT, INC.,  
ATRIX TRUCKING CORP. and  
DARWIN CARDENAS-NUNEZ,

Defendants.

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that a copy of the Summons, Complaint, Jury Demand, Affidavit of Nonadmitted Lawyer, Petition to Appoint Personal Representative, Order Appointing Personal Representative, and Amended Complaint were served upon Defendant Darwin Cardenas-Nunez by serving his counsel, Butt, Thorton & Baehr, P.C. (Monica R. Garcia) on June 9, 2021.

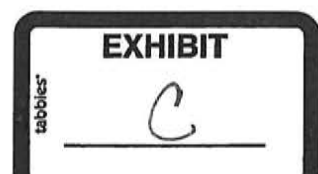
Respectfully submitted,

**Law Office of David Fadduol, LLC**

/s/ David Fadduol

David Fadduol  
500 Tijeras Ave. NW  
Albuquerque, NM 87102  
(505) 355-1316  
(505) 355-1945 fax  
[david@df-lawfirm.com](mailto:david@df-lawfirm.com)

and



**Carr and Carr**

Michael Carr  
4416 S. Harvard Ave.  
Tulsa, OK 74135  
918-747-1000 (phone)  
918-747-7284 (fax)  
[mcarr@carrcarr.com](mailto:mcarr@carrcarr.com)

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 25, 2021, I filed the foregoing electronically through the Odyssey system, which caused all parties and counsel of record to be served by electronic means.

/s/ David Fadduol  
David Fadduol

FILED 1st JUDICIAL DISTRICT COURT  
Santa Fe County  
6/25/2021 7:58 AM  
KATHLEEN VIGIL CLERK OF THE COURT  
Edith Suarez-Munoz

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

TODD LOPEZ, AS PERSONAL  
REPRESENTATIVE OF THE WRONGFUL  
DEATH ESTATE OF JAMES MATHIS and  
DEBORAH MATHIS, individually,

Plaintiffs,

vs.

No. D-101-CV-2021-01048

UNITED PARCEL SERVICE OF AMERICA, INC.,  
UPS GROUND FREIGHT, INC.,  
ATRIX TRUCKING CORP. and  
DARWIN CARDENAS-NUNEZ,

Defendants.

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that a copy of the Summons, Complaint, Jury Demand, Affidavit of Nonadmitted Lawyer, Petition to Appoint Personal Representative, Order Appointing Personal Representative, and Amended Complaint were served upon Defendant United Parcel Service of America, Inc. by certified mail. Attached as Exhibit 1 is the completed United States Postal Service Certified Mail Return Receipt Card.

Respectfully submitted,

**Law Office of David Fadduol, LLC**

/s/ David Fadduol

David Fadduol  
500 Tijeras Ave. NW  
Albuquerque, NM 87102  
(505) 355-1316  
(505) 355-1945 fax  
[david@df-lawfirm.com](mailto:david@df-lawfirm.com)

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Michael Carr  
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918-747-7284 (fax)  
[mcarr@carrcarr.com](mailto:mcarr@carrcarr.com)

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 25, 2021, I filed the foregoing electronically through the Odyssey system, which caused all parties and counsel of record to be served by electronic means.

/s/ David Fadduol

David Fadduol

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Article Addressed to:</p> <p>Complete items 1, 2, and 3.</p> <p>Print your name and address on the reverse so that we can return the card to you.</p> <p>Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>192 Anderson St. SE S.W. 125 Marietta, Georgia 30060</p>		<p>A. Signature X <i>J. Thompson</i></p> <p>B. Received by (Printed Name) <i>J. Thompson</i></p> <p>C. Date of Delivery <i>6-21</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes if YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7021 0350 0000 8540 7422</p>		<p>EXHIBIT 1</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery</p>		<p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>PS Form 3811, July 2020 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>	





FILED 1st JUDICIAL DISTRICT COURT  
Santa Fe County  
6/25/2021 7:58 AM  
KATHLEEN VIGIL CLERK OF THE COURT  
Edith Suarez-Munoz

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

TODD LOPEZ, AS PERSONAL  
REPRESENTATIVE OF THE WRONGFUL  
DEATH ESTATE OF JAMES MATHIS and  
DEBORAH MATHIS, individually,

Plaintiffs,

vs.

No. D-101-CV-2021-01048

UNITED PARCEL SERVICE OF AMERICA, INC.,  
UPS GROUND FREIGHT, INC.,  
ATRIX TRUCKING CORP. and  
DARWIN CARDENAS-NUNEZ,

Defendants.

**CERTIFICATE OF SERVICE**

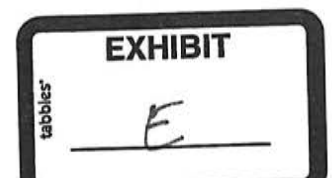
THIS IS TO CERTIFY that a copy of the Summons, Complaint, Jury Demand, Affidavit of Nonadmitted Lawyer, Petition to Appoint Personal Representative, Order Appointing Personal Representative, and Amended Complaint were served upon Defendant UPS Ground Freight, Inc. by certified mail. Attached as Exhibit 1 is the completed United States Postal Service Certified Mail Return Receipt Card.

Respectfully submitted,

**Law Office of David Fadduol, LLC**

/s/ David Fadduol  
David Fadduol  
500 Tijeras Ave. NW  
Albuquerque, NM 87102  
(505) 355-1316  
(505) 355-1945 fax  
[david@df-lawfirm.com](mailto:david@df-lawfirm.com)

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[mcarr@carrcarr.com](mailto:mcarr@carrcarr.com)


*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 25, 2021, I filed the foregoing electronically through the Odyssey system, which caused all parties and counsel of record to be served by electronic means.

/s/ David Fadduol

David Fadduol

SENDER- COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Article Addressed to:</p> <p> <input checked="" type="checkbox"/> Complete items 1, 2, and 3.  <input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you.  <input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. </p> <p> <i>Corporation Service Corp.</i>  <i>AL-USA</i>  <i>726 E. Michigan Dr.</i>  <i>Suite 101</i>  <i>Holts, NM 87240</i> </p> <p>             9590 9402 6022 1028 6109 49 </p>		<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>X</i> <i>6/18/19</i> <i>6-19</i></p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p><i>CS</i> <i>6-1-21</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7021 0350 0000 5540 7453</p> <p>PS Form 3811, July 2020 PSN 7530-02-000-9053</p>		<p>3. Service Type</p> <p> <input type="checkbox"/> Adult Signature  <input type="checkbox"/> Adult Signature Restricted Delivery  <input type="checkbox"/> Certified Mail®  <input type="checkbox"/> Certified Mail Restricted Delivery  <input type="checkbox"/> Collect on Delivery  <input type="checkbox"/> Collect on Delivery Restricted Delivery  <input type="checkbox"/> Restricted Delivery </p> <p> <input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Registered Mail™  <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Signature Confirmation Restricted Delivery </p>	

EXHIBIT

1

Domestic Return Receipt

USPS TRACKING#



9590 9402 6622 1028 6109 49

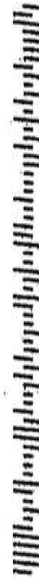
United States  
Postal Service



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box\*

*David Fallick*  
*500 Tigers Ave. NW*  
*Albuquerque, NM 87102*





FILED 1st JUDICIAL DISTRICT COURT  
Santa Fe County  
6/25/2021 10:53 AM  
KATHLEEN VIGIL CLERK OF THE COURT  
Edith Suarez-Munoz

STATE OF NEW MEXICO, COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

**TODD LOPEZ, AS PERSONAL REPRESENTATIVE OF  
THE WRONGFUL DEATH ESTATE OF JAMES  
MATHIS and DEBORAH MATHIS, individually,**

*Plaintiff(s) / Petitioner(s)*

v.

Case No.: D-101-CV-2021-01048

**UNITED PARCEL SERVICE OF AMERICA, INC., UPS  
GROUND FREIGHT, INC., ATRIX TRUCKING CORP.  
and DARWIN CARDENAS-NUNEZ,**

*Defendant(s) / Respondent(s)*

**AFFIDAVIT OF SERVICE**

I, Treasure Holmes, being duly sworn, state:

I am 18 years or older and not a party to this action or a member of a corporation or organization that is a party to this action.

I served the following documents on Atrix Trucking Corp. in Seminole County, FL on June 22, 2021 at 10:34 am at 130 Birchwood Dr., Maitland, FL 32751 by leaving the following documents with Charles Joseph who as Servee at Atrix Trucking Corp is authorized by appointment or by law to receive service of process for Atrix Trucking Corp..

SUMMONS; PLAINTIFFS' AMENDED COMPLAINT; DEMAND FOR TRIAL BY JURY;  
PLAINTIFFS' COMPLAINT; ORDER APPOINTING PERSONAL REPRESENTATIVE FOR  
JAMES MATHIS, DECEASED, IN ACCORDANCE WITH NMSA 1978 § 41-2-1 ET SEQ.;  
PETITION TO APPOINT PERSONAL REPRESENTATIVE TO PURSUE WRONGFUL DEATH  
CLAIM IN ACCORDANCE WITH NMSA 1978 § 41-2-1 et seq.; AFFIDAVIT OF NON-  
ADMITTED LAWYER.

Additional Description:

Mr. Joseph said that he was aware of the documents and accepted the service.

White Male, est. age 50, glasses: N, Black hair, 200 lbs to 220 lbs, 5' 6" to 5' 9",  
Geolocation of Serve: <http://maps.google.com/maps?q=28.6408831973,-81.3519770506>  
Photograph: See Exhibit 1

EXHIBIT

tabbies

F

J. Holmes

Signature

Treasure Holmes

(321) 278-5286

Subscribed and sworn to before me this 25<sup>th</sup> day of June, 2021, by

Treasure Holmes

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

Elizabeth Garcia

Notary Public

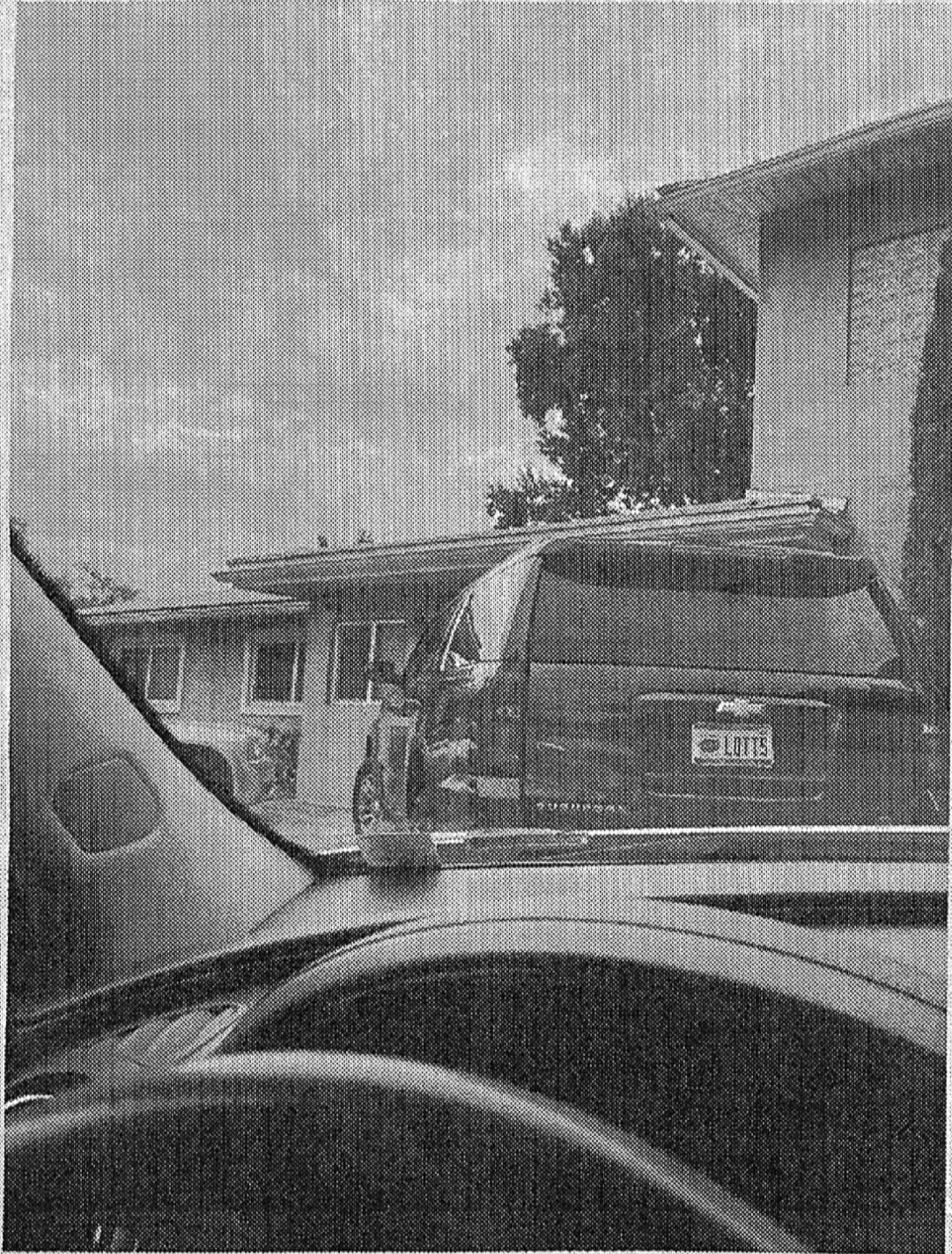


Elizabeth Garcia  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# GG965794  
Expires 3/4/2024



# Exhibit 1

Exhibit 1a)





STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

TODD LOPEZ, AS PERSONAL  
REPRESENTATIVE OF THE WRONGFUL  
DEATH ESTATE OF JAMES MATHIS and  
DEBORAH MATHIS, individually,

Plaintiff,

v.

Case No. D-101-CV-2021-01048

UNITED PARCEL SERVICE OF AMERICA, INC.,  
UPS GROUND FREIGHT, INC.,  
ATRIX TRUCKING CORP, and  
DARWIN CARDENAS-NUNEZ,

Defendants.

**NOTICE OF FILING OF NOTICE OF REMOVAL**

**TO THE DISTRICT COURT CLERK:**

**PLEASE TAKE NOTICE** that on June 29, 2021, Defendants, by their attorneys Butt Thornton & Baehr PC, noticed removal of the above-captioned case to the United States District Court for the District of New Mexico by filing a Notice of Removal in that Court. A copy of the Notice of Removal is attached hereto. Accordingly, and pursuant to 28 U.S.C. § 1446(d), this Court may proceed no further unless and until the case is remanded.

Respectfully Submitted,

BUTT THORNTON & BAEHR PC

/s/ Monica R. Garcia

Monica R. Garcia

P.O. Box 3170

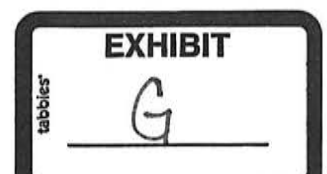
Albuquerque, New Mexico 87190

Telephone: (505) 884-0777

Facsimile: (505) 889-8870

[mrgarcia@btblaw.com](mailto:mrgarcia@btblaw.com)

*Attorneys for Defendants*





I HEREBY CERTIFY that on the 29<sup>th</sup> day of June, 2021, I filed the foregoing electronically through the electronic filing system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

David Fadduol - [david@df-lawfirm.com](mailto:david@df-lawfirm.com)

Michael Carr - [mcarr@carrcarr.com](mailto:mcarr@carrcarr.com)

*Attorneys for Plaintiffs*

/s/ Monica R. Garcia

Monica R. Garcia